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7           **UNITED STATES DISTRICT COURT**  
8           **WESTERN DISTRICT OF WASHINGTON**  
9           **AT SEATTLE**

10           **UNITED STATES OF AMERICA,**  
11                 Plaintiff,  
12                 vs.  
13           **MARTIN LYNN GUITARD,**  
14                 Defendant.

Case No. CR06-0069RSL

ORDER ON MOTION FOR  
DISCLOSURE OF EXCULPATORY  
SENTENCING INFORMATION

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16       This matter comes before the Court on defendant Martin Guitard's "Motion for  
17 Disclosure of Exculpatory Sentencing Information." (Dkt. # 128). Guitard requests an order  
18 compelling the government to disclose certain information regarding co-defendants Neil Kikuchi  
19 and James Ito. The information requested includes: (1) "the existence and substance of all  
20 promises of immunity, leniency or preferential treatment, including any written PLEA  
21 AGREEMENTS and transcripts of plea proceedings," and (2) certain portions of the co-  
22 defendants' presentence investigation reports including all of Parts A and B, along with the  
23 "Personal Characteristic Section" of Part C "dealing with drug usage and mental health."  
24 (Motion at pp. 1-2).

25       With respect to Guitard's first request, the government responds that all promises of  
26 "leniency or preferential treatment" are contained in Kikuchi's and Ito's plea agreements and

1 that Kikuchi and Ito received no “promises of immunity” other than “the standard  
2 agreement...for ‘Non-Prosecution of Additional Offenses.’” (Response at p. 2). Contrary to  
3 Guitard’s mistaken representation, the co-defendants’ plea agreements are not sealed and do not  
4 require a court order to obtain them. The Court therefore denies this aspect of defendant’s  
5 motion to compel.

6 The government also opposes Guitard’s request for certain portions of the co-defendants’  
7 presentence investigation reports. The government contends it has no authority under Local  
8 Rule 32(b)(7) to disclose Kikuchi’s and Ito’s confidential presentence reports to Guitard. The  
9 Court agrees. Rule 32(b)(7) expressly provides that a presentence report “constitutes a  
10 confidential court document and shall be presumed to remain under the continuing control of the  
11 court during the time that such presentence report is in the temporary custody of any...agenc[y].”  
12 Rule 32(b)(7). Because the co-defendants’ reports remain under the Court’s control, the  
13 government may not disclose them.

14 The defendant is correct, however, that Brady v. Maryland, 373 U.S. 83 (1963) requires  
15 disclosure of exculpatory evidence contained in a key witness’s presentence report. See United  
16 States v. Alvarez, 358 F.3d 1194, 1207 (9th Cir. 2004) (“While a criminal defendant has no  
17 constitutional right to examine presentence reports, he is nevertheless entitled to disclosure of  
18 *Brady* material contained therein.”). To conform with Brady’s requirements, the Ninth Circuit  
19 has stated that “trial judges have discretion either to make an *in camera* inspection of the  
20 materials or to rely on an examination by a probation officer.” Id. at 1207-1208 (citing United  
21 States v. Chavez-Vernaza, 844 F.2d 1368, 1375 (9th Cir. 1988)). Accordingly, this Court has  
22 reviewed drafts of Kikuchi’s and Ito’s presentence reports *in camera* to determine whether they  
23 contain any exculpatory information to be disclosed to Guitard.

For the foregoing reasons, defendant Guitard's "Motion for Disclosure of Exculpatory Sentencing Information" (Dkt. # 128) is DENIED. The Court has a packet of portions of the presentence reports which the Court finds should be disclosed to Guitard's attorney. Defense Counsel and the Assistant U.S. Attorneys can pick up these packets in chambers.

DATED this 18<sup>th</sup> day of January, 2007.

Mrs Casnik

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Robert S. Lasnik  
United States District Judge

**ORDER ON MOTION FOR  
DISCLOSURE OF EXONERATORY  
SENTENCING INFORMATION- 3**